

12 CV 05590

Page 2

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District SOUTHERN
Name (under which you were convicted): William Henriquez		Docket or Case No.:
Place of Confinement: Sing Sing Correctional Fac.	Prisoner No.: 08-A-4127	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted)
		v. William Henriquez

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

**BRONX SUPREME COURT
215 East 161st Street
Bronx, NY 10451**

- (b) Criminal docket or case number (if you know): **SCI# 44934/2007**

2. (a) Date of the judgment of conviction (if you know): **November 15, 2007**

- (b) Date of sentencing: **November 15, 2007**

3. Length of sentence: **15 years incarceration to run concurrent with Fed. Case #05CR185**

4. Nature of crime (all counts):
PL 125.20



5. (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

- (a) Name of court:
- (b) Docket or case number (if you know):
- (c) Result:
- (d) Date of result (if you know):
- (e) Citation to the case (if you know):
- (f) Grounds raised:

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know):
- (2) Result:
- (3) Date of result (if you know):
- (4) Citation to the case (if you know):
- (5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, Laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Primary jurisdiction;

Petitioner was first arrested on federal charges, during the course of being detained within a federal detention center--the State of NY initiated a State Charge against petitioner.

Petitioner while in federal custody was transported by the US Marshalls to the State of NY, and turned over to the Dept. Of Corr. of NYC. Petitioner was sentenced on October 26, 2007 within the UNITED STATES District Court--Southern District of NY to a term of 240 months under Federal Registry #55142-054.

GROUND TWO:

(b) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Illegal Detention;

The Federal Sentence was initiated first by the federal Magistrate upon Mr. Henriquez. The State conviction imposed upon Mr. Henriquez was initiated in the Bronx Supreme Court On November 15, 2007, to a term of 15 year term, which until the present day the petitioner has remained in State Custody, and the time Mr. Henriquez has spent in State Custody, he has not been credited for time spent within the state correctional system towards his Federal sentence.

GROUND THREE:

That the Bureau of Prisons (BOP) commence "crediting" the petitioner from the date he was placed into custody by the federal government, detained within a federal institution, and that the sentence imposed upon petitioner as of October 26, 2007 in the United States District Court--Southern District to a 240 month term of incarceration, and the promise of the Court "Mr. Henriquez could serve his sentence in Federal Custody."

GROUND FOUR:

Petitioner is entitled to have Bureau of Prisons consider his request to designate Federal Prison as "place of confinement" for the purposes of determining whether petitioner is entitled to credit against his federal sentence for time spent in State Custody.

This designation, is a necessary prerequisite to carrying out the intention of the State sentencing court that his State sentence be served concurrently with his federal sentence. The Bureau should favorably consider for nunc pro tunc designation of the Federal Prison as a place of Federal confinement on his federal sentence. The time spent in a New York State Correctional Facility was not, and has not been deemed as a place of Federal confinement because it would affect the absolute term of his confinement as well as parole. The Federal system has the primary jurisdiction on petitioner. The petitioner currently is facing possibility of "double punishment" because the Bureau of Prison is making decisions contradictory to implemented regulations established by Congress.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒ If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.


Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on (month, date, year).

Executed (signed) on 7-13-12 (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

SING SING CORRECTIONAL FACILITY
354 HUNTER STREET
OSSINING, NEW YORK 10562

NAME: William Henriquez DIN: 08-A-4127

SING SING



CORRECTIONAL FACILITY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DANIEL PATRICK MOYNIHAN COURTHOUSE
500 Pearl Street
New York, New York 10007

LEGAL CORRESPONDENCE

